IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

C.W.P. No. 3787 of 2007
Date of Decision: 6.12.2007

M/S Pax Properties Pvt. Ltd., Gurgaon.

..... Petitioner through Shri Akshay Bhan, Advocate.

Versus

State of Haryana and others.

..... Respondents through Shri Sanjiv Bansal, Additional Advocate General, Haryana.

CORAM: HON'BLE MR. JUSTICE VIJENDER JAIN,
CHIEF JUSTICE
HON'BLE MR.JUSTICE MAHESH GROVER

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1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

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VIJENDER JAIN, CHIEF JUSTICE

In this petition under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari for quashing letters dated 10.8.2006 (Annexure P8) and 2.3.2007 (Annexure P11) sent to it by respondent no.2-Director, Town and Country Planning Department, Haryana conveying the rejection of its prayer for grant of licence to set up a residential colony. A writ of mandamus has also been sought directing the respondents to grant licence to the petitioner for setting up of residential group housing colony in the revenue estate of Village Gurgaon. Still further, a prayer has been made to direct the

respondents to charge the licence fee, external development charges, conversion charges and any other charges at such rates and Floor Area Ratio (FAR) which were prevailing at the time of presentation of application by the petitioner for grant of aforesaid licence.

The petitioner purchased land measuring 2.5 acres in village Kasba Gurgaon and with an object to set up a residential group housing colony on the said land, applied for grant of licence vide its application dated 2.11.2004 sent to respondent no.2. When no communication was received from the said respondent, the petitioner approached the Chief Minister, Haryana vide his representation dated 30.9.2005. For the first time, a notice was received by it on 4.5.2006 for appearance in person. It also filed a detailed representation dated 11.7.2006. However, its prayer was rejected as intimated vide letter dated 10.8.2006. Feeling aggrieved, the petitioner filed an appeal before Financial Commissioner and Principal Secretary to Government, Haryana, Department of Town and Country Planning and the same was accepted vide order dated 23.10.2006 (Annexure P10). In pursuance to the said order, respondent no.2 re-examined the case of the petitioner, but conveyed the rejection thereof vide letter dated 2.3.2007 on the ground that the present approach to the site is only through a ten metres wide road, whereas as per approved policy, the minimum width should be twelve metres.

The petitioner has averred that licence has been granted in similar cases whereas in its case, the same has been denied without assigning any reason and by a non-speaking order.

On notice, the respondents put in appearance and filed a written statement praying that the writ petition be dismissed. A reference has been made to the provisions of the Haryana Development and Regulation of Urban Areas Act,1975 (for short, `the Rules) and the Rules of 1976 framed thereunder. It has been averred that the application of the petitioner for grant of licence to set up a residential colony has been rejected after considering the same in the light of the policy of the government. The respondents have pointed out that after due examination, it was found that the site of the petitioner would get approach from a 10 meters wide road serving the HUDA plots planned in Sector -15, Part-II and the same did not have its own independent access.

We have heard the learned counsel for the parties and have perused the record.

Learned counsel for the petitioner contended that when the petitioner made the application for grant of licence on 2.11.2004, policy, Annexure P5, was holding the field and the planning norms relating to approach road stipulated therein under Clause 4.2 for a residential colony were as follows:-

"4.2 Planning Norms.

4.2(a) Width of approach road:

1. For residential and industrial colony

a) Outside built up area	30 feet
b) Within built up area (only for residential)	106 feet

xx xx xx xx xx xx xx"

He contended that the petitioner's application has been rejected on the basis of new policy, Annexure P8A, which was not in existence at the relevant time and the same has not been notified so far. Learned counsel argued that in the case of Tulip Housing, Faridabad, licence has been granted despite the fact that its colony was having only ten metres wide approach road and, thus, the claim of the petitioner has been wrongly ignored even though the application was made prior to that of the former.

On the other hand, learned counsel for the respondents argued that the case of the petitioner for grant of licence to set up a residential colony was considered in the light of the existing policy and the rejection thereof was based on the cogent reasons.

We have heard the learned counsel for the parties at some length.

A perusal of order dated 23.10.2006 (Annexure P10) shows that the respondents themselves had admitted that the petitioner satisfied all the para-meters according to policy, Annexure P5 when it applied for grant of licence in November,2004 and that they had granted licences to colonies which were having accessible roads with a width of nine metres. In view of this, the petitioner, who was concededly having an approach road of ten metres width, certainly seems to have been wronged by the decision of the respondents. No plausible explanation could be given in so far as grant of licences to other colonies, who were having approach roads of nine metres and in the case of Tulip Housing, Faridabad, it was ten metres width. When

the petitioner had applied, the policy, Annexure P5, was in existence and the respondents slept over the decision-making process. The petitioner cannot be penalised for the same and the licence cannot be denied to it merely on the ground that some new para-metres have come into existence which have provided for twelve metres wide approach road.

Further, in its re-joinder, the petitioner has elaborated that the site in question is easily accessible as on the right side, there is already existing a public path for the general public. It has further stated that ten metres wide approach road is existing, which leads to the site in question and which has only thirty metres' length. It has also stated that this approach road terminates on the HUDA road having width of eighteen metres which is connected with twenty four metres wide sector road and which finally exits to hundred metres National Highway No.8. Thus, only a miniscule area is of ten metres width. The petitioner has also expressed its willingness to leave area abutting the sector road so that the road is of requisite revised norms.

Consequently, in view of the above, we are of the opinion that the licence cannot be denied to the petitioner once it fulfilled all the para-meters which it was required to fulfill on the date of application and the denial is purely on account of inaction on the part of the respondents, who cannot turn around to say that it should conform to the revised para-meters. In any eventuality, the petitioner has shown sufficient material to satisfy the Court that it has been discriminated against as in other cases where nine metres approach road was available, licences have been granted as per the

candid admission of the respondents as reflected in order dated 23.10.2006 (Annexure P10).

The petitioner has also demonstrated that the colony is highly accessible and it is only a small approach road which has ten metres width. It has also expressed its willingness to conform to the present required standards.

In view of the above, the writ petition is accepted, impugned letters Annexures P8 and P11 are set aside and the respondents are directed to grant the licence to the petitioner forthwith, preferably within a period of four weeks from the date of communication of this order.

Needless to say that if the petitioner is entitled to any other consequential relief on account of this order, the same shall also follow. It is also made clear that the petitioner shall agree to conform to all other conditions that may be required of it for constructing the colony.

(Vijender Jain)
Chief Justice

December 06,2007
"SCM"

(Mahesh Grover)
Judge